

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 17359
[Redacted])	
)	DECISION
Petitioner.)	
_____)	

[Redacted](petitioner) protests both a Notice of Deficiency Determination (NOD) dated April 1, 2003 and another NOD dated October 15, 2003. Both of the NODs asserted additional liability for Idaho income tax, penalty, and interest. The first NOD asserted liabilities in the total amounts of \$7,338 and \$8,868 for 1998 and 2001, respectively. The second asserted liabilities in the total amounts of \$6,564 and \$31,273 for 1998 and 2001, respectively, and also addressed the adjustments made in the first NOD. Therefore, the amounts here at issue are those included in the second NOD.

The petitioner was an Idaho resident. The first NOD was issued after the Tax Commission staff found that the petitioner had not filed Idaho income tax returns for the years here in question. The petitioner appealed that first determination. Upon reviewing the information in the file, it was found that some of the issues needed further investigation. Therefore, the file was sent to an auditor to complete the investigation. Upon completion of the investigation, the auditor issued the second NOD.

There are several issues to be addressed in this matter. They are as follows:

1. Whether the petitioner had taxable income for 1998 and, if so, the amount thereof;
2. Whether the petitioner is entitled to claim capital losses from certain mining stocks becoming worthless in the total amount of \$45,080 for 2001;
3. What gain should be reported for 2001 from the sale of real property;

4. Whether there was interest income which was not reported by the petitioner;
5. The amount, if any, of a deduction that should be allowed to the petitioner for charitable contributions during 2001; and
6. Whether the delinquency penalty should be applied.

[1] The return supplied by the petitioner for 1998 reflected a gain from the sale of real property and the taxable portion of his social security. At one point, the Internal Revenue Service had proposed to increase the income reported by the petitioner. Pursuant to an agreement between the parties, the U. S. Tax Court decided that there was no deficiency in the income tax due from, or overpayment due to, the petitioner for the taxable year 1998.

The representative for the petitioner argued that this should be interpreted to mean that the petitioner had no taxable income for 1998. The Commission does not find the language set out by the Tax Court to support this interpretation. Further, when the petitioner was asked to explain why the gain from the sale of the land should not be included in the computation of taxable income, no satisfactory explanation was provided. Therefore, the Commission finds that the income from the sale of the land is properly included in the computation of taxable income.

In the original NOD, the social security income which was taxable for federal purposes was also treated as taxable for Idaho purposes. This was incorrect and was corrected in the second NOD.

In the original NOD, the standard deduction allowed was \$4,250. In the subsequent NOD, the standard deduction allowed was \$5,300. The amount properly allowable was \$5,300.

[2] The petitioner claimed capital losses from worthless stock relating to stock in 11 different companies. It appears they were all mining companies. The petitioner claimed that he purchased each of the stocks and that each of the stocks became worthless in 2001. The amounts claimed are as follows:

[Redacted]

\$ 45,080

The taxpayer bears the burden of establishing that he is entitled to deductions. In each of these issues, the petitioners are seeking deductions. In seeking such deductions, taxpayers have the burden of proof. The U. S. Supreme Court has stated:

Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed.

* * *

Obviously, therefore, a taxpayer seeking a deduction must be able to point to an applicable statute and show that he comes within its terms.

New Colonial Ice Co. v. Helvering, 292 U.S. 435, 440, 54 S.Ct. 788, 790 (1934).

Thus, in this case, the petitioner must establish both his basis in the particular security and that the security became worthless in the period that the deduction is claimed. The petitioner has failed to establish to the Commission's satisfaction his basis in the securities numbered 1, 2, and 3 above. Therefore, the losses claimed with regard to those securities are denied. It appears that the companies numbered 4, 6, 7, 8, and 11 survived past 2001 in one form or another. Therefore, the losses with regard to these securities are denied. It is entirely unclear whether the security numbered 10 above survived past 2001. Since the burden of proof is upon the petitioner, the loss with regard to this company is denied. It appears to the Commission that the securities numbered 5 and 9 above did become worthless in 2001. Therefore these claimed losses are allowable. The petitioner indicated that he would provide additional documentation regarding these securities but has failed to do so.

[3] On the petitioner's 2001 income tax return, he reported a sale of real property. The reported sales price was \$1,260,000. The petitioner claimed a basis for the property in the amount of \$547,902. He claimed commissions and other expenses of sale in the amount of \$9,111. He

disclosed that "[m]ost costs based on reconstructed professional estimates." The petitioner excluded (pursuant to Internal Revenue Code § 121) \$226,000 of the gain as being attributable to his primary residence. The record indicates that the petitioner retained some interest in some of the property disposed of, but the specific relevant facts have not been presented.

Upon reviewing the petitioner's documentation, the auditor found that the petitioner's basis in the property was \$138,500 and that the commissions and other expenses of sale totaled \$5,367. She adjusted the gain from the sale of the property accordingly. She disallowed the exclusion of the gain as being attributable to the sale of the petitioner's principal residence pursuant to Internal Revenue Code § 121. She determined that the income properly reportable in 2001 to reflect this sale should be \$278,625 as opposed to the gain reported by the petitioner of \$119,072. The petitioner indicated that other costs were incurred. The petitioner's representative indicated that he would submit more documentation regarding these costs and the character of the property, but no further documentation was received. Therefore, the Commission finds that the petitioner has failed to carry his burden of proof and that the determination of the auditor in the NOD dated October 15, 2003 regarding this issue must be upheld.

[4] The Commission found that the petitioner had interest income from two sources in 2001 that was not reported on his income tax return. The record indicates that the petitioner received interest income from [Redacted] in the amount of \$216 and interest income from [Redacted] in the amount of \$2,044. The petitioner has raised no objection to this income being included in the computation of his Idaho taxable income. Therefore, it appears to the Commission that the determination that this income should be included in the computation of the petitioner's Idaho taxable income is correct.

[5] At several points, the Tax Commission staff questioned certain charitable contributions which the petitioner claimed. The income tax returns submitted by the petitioner indicated that some of these claimed contributions took place in 2001. There was also a charitable contribution deduction claimed which indicated that it related to a contribution made in a prior year and was carried forward to 2001. More documentation was sought. None was received. The petitioner has failed to carry his burden of proof with regard to these claimed deductions.

[6] The representative for the petitioner contends that, due to the complexity of the returns, the petitioner should not be subject to the delinquency penalty. It appears that the petitioner's federal return for 1998 was prepared on August 8, 2002, and submitted to the Tax Commission staff shortly thereafter. The only income was from one land sale and from the portion of his social security benefits that were taxable for federal income tax purposes. It appears that the petitioner's federal income tax return for 2001 was prepared on April 12, 2002, and was not submitted to the Tax Commission until August 14, 2002. Nothing in the Idaho returns (as opposed to the federal return) appears to be particularly complex.

The 1998 income tax return does not appear to contain any significant complexity. Any significant complexities would appear to be in the preparation of the federal income tax return for

2001. The 1998 federal return was not complicated. The 2001 federal return was prepared well before it was submitted to the Tax Commission. The Commission does not accept the argument that the complexity of the returns should excuse this delinquency.

In addition to the adjustments set forth above, the limitation on the amount of itemized deduction allowable to the petitioner was recomputed to reflect the adjustments made above and also to correct a computational error made in the NOD dated October 15, 2003.

WHEREFORE, the Notice of Deficiency Determination dated October 15, 2003, is hereby MODIFIED, and as so modified is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the petitioner pay the following tax, penalty, and interest (calculated to June 15, 2005):

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1998	\$ 4,157	\$ 1,037	\$ 1,605	\$ 6,799
2001	23,267	5,817	3,629	<u>32,713</u>
				\$39,512
		Less Payments Received		<u>(12,168)</u>
		Amount Due		<u>\$27,344</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the petitioner's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of _____, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
